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Supreme Court, U.S.
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CASE NUMBER: 95-327

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1995

**ILVER ROSE ENTERTAINMENT, INC., A FLORIDA ORPORATION; SUNSHINE FOOD MART, A FLORIDA ROPRIETORSHIP; DALE'S PACKAGE STORE AND OUNGE INC., A FLORIDA CORPORATION; KELLY AIL, INC., A FLORIDA CORPORATION; WARD ASTENADA, INC., A FLORIDA CORPORATION; ARRY'S OF ORANGE PARK, INC., A FLORIDA ORPORATION; VARSITY CLUB, INC., A FLORIDA ORPORATION; FLYNN RESTAURANTS, LTD., AN IOWA ORPORATION, 57 HEAVEN, A CORPORATION; AND INTER ENTERPRISES, INC., A FLORIDA RPORATION,**

**TITIONERS,**

**AY COUNTY, A POLITICAL SUBDIVISION OF THE ATE OF FLORIDA, AND SCOTT LANCASTER, AS ERIFF OF CLAY COUNTY,**

**SPONDENTS.**

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**PETITION FOR WRIT OF CERTIORARI FROM THE FLORIDA FIRST DISTRICT COURT OF APPEAL**

**REPLY TO BRIEF IN OPPOSITION**

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## I. REPLY TO RESPONDENTS' CLAIM THAT THIS COURT LACKS CERTIORARI JURISDICTION AS A MATTER OF LAW CONCERNING PETITIONERS' EQUAL PROTECTION ARGUMENT.

Respondents correctly point out that this Court's rule concerning discretionary jurisdiction under 28 U.S.C. § 1257 does not lie unless the federal question was decided at the state court level (R.A. at 18). However, upon a careful reading of the First District Court of Appeal's opinion, it can be said with certainty that the Equal Protection issues were addressed and subsequently decided by that Court. The First District observed:

> Appellants' attack on Clay County's ordinance predicated on the line of cases culminating in Moore boils down, therefore, to an assertion that there is no "valid and substantial reason" for regulating the hours of sale of alcoholic beverages, when no other enterprise is so restricted. But this type of discrimination against purveyors of alcoholic beverages is the rule rather than the exception. No case of which we are aware has held that an ordinance "violates the state and federal guarantees of equal protection of the laws," Shevin v. Bocaccio, Inc., 379 So. 2d 105, 106 (Fla. 1979), because it "applies only to alcoholic beverage

licensees and their employees." Id., (P.A. at A-25, A-26).

It is plain from a reading of the above quoted material that the Equal Protection issues inherent in this case were realized, addressed, and ultimately dismissed by the Florida First District Court of Appeal. Because the Equal Protection issues were decided by the Florida First District Court of Appeal, the Respondents' claim that this Court lacks discretionary jurisdiction as a matter of law fails. Therefore, this Court's discretionary jurisdiction may be invoked pursuant to 28 U.S.C. § 1257.

## II. REPLY TO RESPONDENTS' CLAIM THAT THE CLAY COUNTY ORDINANCE DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE OF THE CONSTITUTION.

Respondents' assert that the Clay County Ordinance prohibiting the sale of alcohol on Christmas Day is not violative of the Equal Protection clause because, as Respondents claim, the ordinance is rationally based and free of invidious discrimination as required by this Court in Dandridge v. Williams, 397 U.S. 471 (1970),(R.A. at 19-23). Respondents rely on various excerpts from the opinions delivered by the two state courts identifying the following as bases for the ordinance: (1) to encourage a respite from work, making family activity on Christmas Day possible; (2) to discourage the consumption of alcohol on Christmas Day; (3) evidence offered by Respondents suggesting that Christmas is a particularly deadly time of year from the standpoint of highway safety (keeping in mind the high incidence of highway fatalities related to alcohol abuse); and (4) that

alcohol can serve as an accelerant to domestic violence, especially on Christmas Day when many families come together by tradition (R.A. at 21).

To be considered rational, the Clay County Ordinance must exist for the health, safety, or welfare of the citizens of the state of Florida, and not for the purposes of recognizing certain sectarian christian principles, such as abstaining from drinking alcohol on a religious holiday like Christmas Day. The only evidence proffered by the Respondents in the courts below concerns a 1992 study conducted by the Florida Department of Highway Safety and Motor Vehicles (partially reproduced in the appendix of this document). The study indicates, among other things, the fatality rate of traffic accidents occurring over a several day period during the following holidays: New Year's Eve, Memorial Day, Independence Day, Labor Day, Thanksgiving,

and Christmas. Petitioners do not question the validity of the study or the inference that the Christmas holidays have one of the higher fatality rates. Petitioners do, however, point out for the Court that the study involves a several day period for each holiday and not just a day, such as Christmas Day. Therefore, it is totally impossible to determine the number of alcohol related fatalities occurring, for example, on a given holiday like Thanksgiving Day or Christmas Day, as opposed to the preceding or following days. Therefore, because it is impossible to determine the fatality rate for Christmas Day and because many of the other holidays have high fatality rates as well, the study provided by Respondents does not provided a rational basis for isolating Christmas Day under the prohibitive ordinance. If anything, the 1992 study raises additional questions concerning the ordinance's true purpose. For example, if the purpose of the

ordinance is to make holiday travel safer, why is the sale of alcohol only prohibited on Christmas Day as opposed to the block of days outlined in the 1992 study. Further, if the real purpose was to protect the inhabitants of Clay County against alcohol-related traffic incidents rather than prohibiting the sale of alcohol on just one day out of the entire year, then why did Clay County choose not to regulate the holiday period beginning on the twenty-third or twenty-fourth of December and continuing through the twenty-sixth or twenty-seventh of Christmas, when a majority of the Christmas holiday travel occurs? Also, why did the County not choose to prohibit the sale of alcohol on any of the other holidays contained in the 1992 study? Could the answer lie in the fact that other holidays listed such as Thanksgiving and New Years are purely secular?

Finally, the Court should also note one of the final blows to Respondent's lukewarm

argument regarding the purpose of the "no sale of alcohol of Christmas being related to public safety and not religion" falls flat on its face when the entire ordinance is read. Subjection 3-2(d) extends the hours for sale of alcohol by another two (2) hours on the following weekend, New Year's Eve, a more dangerous holiday with no religious ties whatsoever.

Consequently, the search for a rational basis for the Clay County ordinance prohibiting the sale of alcohol on Christmas Day leads to one inescapable conclusion. The sole basis for the statute is to conform the behavior of all Clay County citizens so that the sensitivities of those practicing the Christian religion in the County are not offended. The final blow comes from the fact that the study submitted by Clay County was in 1992, whereas the Clay County Ordinance was enacted in 1979. The study covers the years 1989 through 1992 and, therefore,

cannot be considered as relevant because: (1) The study was not even in existence in 1979 and could not have been relied upon by the County when it enacted the ordinance[1], and (2) Clay County's ordinance prohibiting sale of alcohol was in effect 1989 through 1992 and, consequently, alcohol traffic-related fatalities in Clay County presumably could not have been considered.

Therefore, the record in this case is devoid of any evidence providing a rational basis for prohibiting the sale of alcohol on Christmas Day. There being no evidence of a rational basis supporting the County's enactment of the prohibitive ordinance, Petitioners and all other business establishments prevented from selling alcohol on Christmas Day are not afforded equal protection under the laws and ordinances of Clay County as guaranteed by the Fourteenth

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[1] There was no evidence in the form of studies illustrating alcohol-related traffic fatalities in 1979 by which Clay County could have relied upon in enacting the ordinance.

Amendment to the Constitution.

Respondents also assert that the Twenty-First Amendment to the Constitution provides a rational basis for singling out Christmas Day as the ONLY day of the 365-day calendar year in which no alcohol may be sold in Clay County. While it is true that the Twenty-First Amendment gives states wide latitude in the enforcement of their police powers concerning the sale of alcoholic beverages, a state may not hide behind the amendment and assert such regulatory power for the sole purpose of respecting the sensitivities of certain sectarian religious groups. As argued above, the obvious purpose of this ordinance has nothing to do with Clay County's enforcement of its police powers and everything to do with the establishment of religion and equal protection under the law.

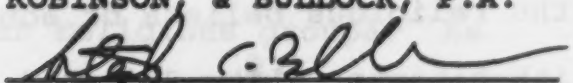
The Supreme Court of Connecticut came to the correct conclusion applying Federal Constitutional principles when it struck down

a local ordinance prohibiting the sale of alcohol on Good Friday. Griswold Inn, Inc. vs. State of Connecticut, 441 A.2d 16 (Conn. 1981). Although Respondent has done its best in attempting to nitpick differences between Griswold, supra, and the case at bar, the bottom line is that one ordinance chose to prohibit the sale of alcohol on Good Friday, while the other chose to prohibit the sale of alcohol on Christmas Day. The result is the same. The Clay County ordinance singled out of the entire 365-day year, Christmas Day, to prohibit the sale of alcohol in observance of the religious beliefs of some of its inhabitants. Like Griswold, supra, the Clay County ordinance is unconstitutional.

## III. CONCLUSION

Because the Equal Protection issues were addressed and decided by the Florida First District Court of Appeal, this Court is not prevented from exercising its discretionary jurisdiction concerning the Equal Protection issues raised by Petitioners. Because there is no rational basis for the Clay County ordinance prohibiting the sale of alcohol on Christmas Day, this Court should grant jurisdiction and overturn the ordinance.

BRANNON, BROWN, HALEY,
ROBINSON, & BULLOCK, P.A.



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